

Message Text

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C O N F I D E N T I A L SECTION 01 OF 03 BONN 11840

E.O. 11652: GDS

TAGS: PFOR, GW, WB, US, UK, FR

SUBJECT: EXTENSION OF EC TREATIES AND REGULATIONS TO
BERLIN

REF: BONN A-320, JULY 22, 1975

SUMMARY: IN RESPONSE TO REPEATED ALLIED REQUESTS FOR
FRG COMMENTS ON THE QUESTIONS RAISED IN REPAIR WHICH
FOCUSES ON THE PROBLEM OF EXTENDING EC TREATIES AND
REGULATIONS TO BERLIN, FRG BONN GROUP REPS HAVE
PROVIDED GERMAN VIEWS, EMPHASIZING THEY SEE NO
COMPELLING REASONS TO CHANGE ESTABLISHED PROCEDURES.
ALLIED REPS HAVE NOT AGREED WITH THIS PREMISE, STRESSING
THE NEED FOR PRIOR CONSULTATION WHEN EC TREATIES AND
REGULATIONS ARE EXTENDED TO BERLIN. END SUMMARY.

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1. AT JULY 16 BONN GROUP MEETING, FRG REP (LUECKING)

SET FORTH GERMAN VIEWS ON THE EXTENSION OF EC TREATIES TO BERLIN. STATING THAT THE FRG SAW NO COMPELLING REASONS TO CHANGE PROCEDURES FOR NOTIFYING THE ALLIES OF EC TREATIES AND REGULATIONS TAKING EFFECT IN BERLIN, LUECKING ADDED THAT THE ESTABLISHED PROCEDURES HAD PROVEN THEMSELVES FOR MANY YEARS. (THE REFAIR SUMMARIZES BONN GROUP DISCUSSIONS ON THIS SUBJECT AND INCLUDES THE SUBSTANCE OF A FRENCH PROPOSAL WHICH SUGGESTS THREE CHANGES: (1) CONSULTATION WITH THE ALLIES BEFORE EC TREATIES AND REGULATIONS TAKE EFFECT IN BERLIN; (2) MENTION OF BERLIN IN TEXTS OF EC AGREEMENTS; AND (3) ADAPTATION OF SECTION THREE OF THE ANNEX OF BKC/L (52) 6 TO INCLUDE COMMERCIAL OR PAYMENT AGREEMENTS WHEN EC AGREEMENTS EXPRESSLY STATE THEY ARE IN FORCE WHERE THE EC CONSTITUTIVE TREATY IS ITSELF APPLICABLE.)

2. LUECKING CITED THREE BASIC REASONS IN SUPPORT OF THE FRG VIEW. FIRST, WERE WE TO CHANGE THE EXISTING PROCEDURES REGULATING THE COMING INTO FORCE OF EC TREATIES IN BERLIN, THE USSR COULD CLAIM THE ALLIES HAD UNILATERALLY CHANGED THE EXISTING SITUATION IN BERLIN, THEREBY CONTRAVENING THE QA. THIS, IN TURN, WOULD VERY LIKELY RESULT IN THE SOVIETS CHALLENGING WSB AS AN AREA OF APPLICATION OF THE ROME TREATY. SECOND, THE FRG IS NOT KEEN ON THE IDEA OF HAVING EC ORGANS DISCUSSING BERLIN PROBLEMS SINCE THEY CLEARLY LACK THE NECESSARY EXPERTISE. AND THIRD, CHANGES IN THE EXISTING PROCEDURES ARE NOT NECESSARY BECAUSE UNDER THE CURRENT SYSTEM THE RIGHTS AND RESPONSIBILITIES OF THE THREE POWERS ARE FULLY PRESERVED; THE THREE ARE NOW CAPABLE OF SUSPENDING OR RESTRICTING EC TREATIES AND REGULATIONS WHICH THEY REGARD AS BEING INCOMPATIBLE WITH THEIR RIGHTS AND RESPONSIBILITIES IN BERLIN.

3. LUECKING STRESSED THE NEED TO DEAL WITH PRACTICAL ASPECTS OF THE PROBLEM AND LEAVE PURELY LEGAL ISSUES TO ANOTHER DAY; HE ASSERTED THAT ALL PRACTICAL PROBLEMS CAN BE SOLVED BY OBSERVING MORE CLOSELY DECISION MAKING PROCEDURES IN THE EC, AND THAT THIS WOULD BE CONFIDENTIAL

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POSSIBLE WITHOUT INTRODUCING ADDITIONAL INSTITUTIONAL MECHANISMS. THE FRG EC MISSION HAS BEEN INSTRUCTED TO PAY CLOSER ATTENTION TO MATTERS AFFECTING BERLIN, AND LUECKING SUGGESTED THAT THE UK AND FRENCH ISSUE SIMILAR INSTRUCTIONS. OF COURSE, HE ADDED, THE US WOULD HAVE TO BE KEPT FULLY INFORMED.

4. UK REP (CROMARTIE) EXPRESSED HIS "UNHAPPINESS"

WITH THE SUGGESTION THAT EC MISSIONS BECOME INVOLVED,
FOR THEY WOULD NOT BE FULLY COGNIZANT OF THE
RAMIFICATIONS OF THE ISSUES. CROMARTIE ASKED IF THE
FRG COULD ACCEPT THE FRENCH PROPOSAL OF PRIOR AK
APPROVAL OF EC TREATIES AND REGULATIONS IF A BK/L
WERE ISSUED TO KEEP THE MATTER OUT OF THE PUBLIC
ARENA. LUECKING RESPONDED THAT BK/L OR NO BK/L SOVIET
ATTENTION WOULD BE DRAWN TO THE ISSUE, AND THIS IS
PRECISELY WHAT THE FRG SEEKS TO AVOID. MOREOVER, THE

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FRG WILL INSIST VERY MUCH ON THE INVOLVMENT OF THE EC
MISSIONS.

5. US REP SAID HE COULD NOT TOTALLY AGREE THAT

EXISTING PROCEDURES HAVE BEEN WORKABLE, FOR IT HAD TAKEN THE ALLIES SEVERAL MONTHS TO CLARIFY THE EXISTING SITUATION. US REP EMPHASIZED THAT ALLIED REPS WERE NOT AGAINST THE PRINCIPLE OF EXTENDING EC TREATIES TO BERLIN, BUT RATHER WANTED THE EXTENSION TO BE DONE IN A WAY THAT ALLIED RIGHTS AND RESPONSIBILITIES WILL BE PRESERVED AND SOVIET PROTESTS AVOIDED. FOR THIS REASON, AS IMPORTANT AS FRG PRACTICAL CONSIDERATIONS ARE, WE WOULD HOPE TO BE ABLE TO MOVE INTO LEGAL QUESTIONS PROMPTLY.

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6. FRENCH REP (BOISSIEU) STATED THAT HE WAS NOT REALLY CONVINCED BY THE FRG PRESENTATION. A BASIC PROBLEM STEMS FROM BK/L (57) 44 AND THE WORD "REGULATIONS" THEREIN; IT IS NOT CLEAR PRECISELY WHAT THE AK HAD IN MIND WHEN IT ISSUED BK/L (57) 44, THEREBY PROVIDING A PROCEDURE FOR EXTENDING EC REGULATIONS TO BERLIN. THE ALLIED RESERVATION IN BK/L (57) 44 NEEDS CLARIFICATION. THE FRENCH ARE NOT REQUESTING THAT EXISTING PROCEDURES BE ABANDONED, BUT RATHER THAT THEY BE APPLIED MORE EFFICIENTLY. ALLIED MISSIONS IN BERLIN ARE STILL NOT IN AGREEMENT ABOUT THE WAY IN WHICH EC REGULATIONS ENTER INTO FORCE IN BERLIN. ONLY FIVE TO TEN CASES PER YEAR WOULD REQUIRE SPECIAL TREATMENT, BUT IT IS IMPORTANT THAT THESE CASES BE HANDLED EFFICIENTLY. THE INEFFICIENCY OF THE PRESENT SYSTEM IS UNDERSCORED BY THE SIX TO EIGHT MONTH DELAY BETWEEN PUBLICATION OF EC TREATIES AND REGULATIONS IN BRUSSELS AND THEIR PUBLICATION IN BERLIN. LUECKING SAID THAT HE HAD NOT BEEN AWARE OF THE SIX TO EIGHT MONTH DELAY, AND AGREED THAT IT WAS AN IMPORTANT POINT.

7. PRESENTING HIS PERSONAL OPINION, UK LEGAL ADVISOR (EDWARDS) SAID THAT THE ALLIES PROBABLY HAD GIVEN AWAY A LITTLE BIT OF THEIR SOVEREIGNTY TO THE EC WHEN BK/L (57) 44 WAS ISSUED. HE ADDED THAT IT WAS IMPORTANT TO NOTE THAT IT WAS GIVEN TO THE EC AND NOT THE FRG SINCE, IF THE LATTER WERE THE CASE, THE FRG COULD NOT, IN TURN, DELEGATE ITS COMPETENCE TO THE EC. THE ALLIES MIGHT WISH TO CONSIDER DEFINING EC REGULATIONS IN THE PREAMBLE TO BK/L (57) 44. LUECKING REPLIED THAT THE FRG WAS PREPARED TO START THERE, BUT THAT IT IS MORE IMPORTANT TO DEAL WITH PRACTICAL QUESTIONS AND FOLLOW THROUGH.

8. IN RESPONSE TO LUECKING'S STATEMENT THAT HE DID NOT SEE THE PRECISE PROBLEM INVOLVED WITH RESPECT TO THE USE OF THE TERM "REGULATIONS", BOISSIEU STATED

THAT THE ROME TREATY IS NOT CLEAR ABOUT WHAT KINDS OF
ACTS SHOULD BE TAKEN BY REGULATION. FRG LEGAL ADVISOR
(DUISBERG) STATED HE WAS NOT SURE HE COULD AGREE.
BOISSIEU REITERATED HIS POSITION, CONCLUDING THAT THE
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ALLIES WANT TO AVOID "THE WORST POSSIBLE CASE":
NAMELY, DECLARING THAT AN EC TREATY IS NOT APPLICABLE
TO BERLIN AFTER IT HAS BEEN CONCLUDED. THE ALLIES
SHOULD BE IN A POSITION TO EXPRESS THEIR VIEWS BEFORE
AN EC TREATY IS CONCLUDED.

9. LUECKING SAID HE AGREED ENTIRELY, BUT ADDED THAT

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THE SOVIETS HAVE NOT COMPLAINED YET. WE MUST AVOID CREATING A PROBLEM WHERE ONE DOES NOT EXIST, AND WE MUST AGREE ON A COMMON APPROACH TO THIS ISSUE BEFORE PROGRESS CAN BE EXPECTED. EDWARDS STATED THAT THIS COMMON APPROACH COULD BE FOCUSED ON REGULATIONS COMING UNDER ARTICLE 235 OF THE ROME TREATY AND ON THOSE REGULATIONS WHICH GIVE EFFECT TO EC TREATIES. THE UK WOULD PREFER TO HANDLE THESE QUESTIONS WITHIN THE BONN GROUP, BUT THE FRG MISSION IN BRUSSELS IS IN A UNIQUE POSITION TO SPOT POTENTIAL DIFFICULTIES AND FORWARD THEM FOR OUR CONSIDERATION.

10. DUISBERG SAID HE ASSUMED THAT THE BONN GROUP WOULD WANT TO LOOK AT ALL THE RELEVANT ACTS WHICH ARE IN SUBSTANCE REGULATIONS WHETHER THEY ARE CALLED CONFIDENTIAL

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DECISIONS, DIRECTIVES, OR REGULATIONS. THE BASIC QUESTION WE SHOULD DEAL WITH IS THREE-FOLD: WHAT ACTS ARE WE INTERESTED IN; HOW DO WE IDENTIFY THEM FOR PRIOR CONSULTATION; AND IN WHICH FORUM SHOULD THEY BE CONSIDERED. BOISSIEU OFFERED TO DRAFT AND CIRCULATE A PAPER DEALING WITH THESE QUESTIONS IN ORDER THAT BONN GROUP DISCUSSIONS PROCEED FROM A COMMON BASE.

11. US REP CONCLUDED THE DISCUSSION STATING THAT THE ULTIMATE OBJECTIVE IN DRAFTING SUCH A PAPER IS TO FORMULATE A DEFINITIVE ANSWER TO SOVIET PROTESTS STATING THAT THE EC CANNOT MAKE DECISIONS AFFECTING BERLIN.
HILLENBRAND

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